International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2228/2012*, **

Communication submitted by:	Maya Abromchik (represented by counsel, Sergey Golubok)
Alleged victim:	The author
State party:	Belarus
Date of communication:	9 August 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 17 August 2012 (not issued in document form)
Date of adoption of Views:	20 March 2018
Subject matter:	Ill-treatment by the police
Procedural issues:	Exhaustion of domestic remedies; substantiation
Substantive issues:	Torture; effective investigation
Articles of the Covenant:	2 (3) and 7
Articles of the Optional Protocol:	1, 2 and 5 (2) (b)

1. The author of the communication is Maya Abromchik, a national of Belarus born in 1989. She claims that the State party has violated her rights under article 7 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is represented by counsel, Sergey Golubok.

The facts as submitted by the author

2.1 On the evening of 19 December 2010, the author intended to observe the peaceful assembly in the centre of Minsk that followed the announcement of the results of the presidential election in Belarus, together with her friends. After the event, at approximately 11.50 p.m., while moving along the avenue, the author and her friends were suddenly stopped by a special unit of the riot police. When the police attempted to detain some of the

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

author's friends, she and others tried to escape. They reached the wall of pretrial detention centre No. 1 in Minsk and were blocked there.

2.2 One of the officers started beating the author's friend, A. When the author asked the officer to stop, she was punched on the left leg with a rubber truncheon, as a result of which she fell down. The police officer punched her again and ordered her to stand up and walk to the police vehicle. The author realized that her leg had been broken and told the police officer so. He grabbed her and took her to the police minivan. Only after several hours, following the intervention of her co-detainees, was the author taken to hospital. She underwent surgery and was treated at the 6th Minsk City Hospital from 20 to 27 December 2010. She had a compound leg fracture and remained partially disabled for six weeks after her discharge.

2.3 The author complained about the unlawful actions of the police to the Minsk City Prosecutor's Office almost immediately after the incident. On 30 December 2010, the Minsk City Prosecutor's Office forwarded her complaint to the prosecutor of the Moscow district of Minsk, who forwarded it to the Minsk City police station on 3 January 2011. On 12 January 2011, the Minsk City police returned the author's complaint to the prosecutor of the Moscow district of Minsk.

2.4 Criminal proceedings against the police officers referred to in the author's complaint formally commenced on 18 April 2011. On 19 May 2011, the author was questioned by an investigator from the Minsk City Prosecutor's Office. She provided details about the incident of 19 December 2010 and described the police officer who had ill-treated her.

2.5 In May 2011, the author's counsel recorded the testimony of Z and Y., who had both witnessed the events. The author's counsel also requested that the investigator formally question those persons, but no such questioning took place. Apart from the additional questioning of the author and the examination of the crime scene, no other actions were carried out in the framework of the investigation and no attempt was made to identify the police officer who had ill-treated the author, despite the author's assertion that she would be able to identify him.

2.6 On 2 December 2011, a senior investigator from the Minsk City Prosecutor's Office informed counsel that the investigation had been suspended because it was impossible to identify those responsible. On the same date, counsel formally requested that the investigator provide the full text of the decision to suspend the investigation, arguing that a copy of the decision was required in order to lodge an appeal against it. On 5 December 2011, counsel's request was denied.

2.7 On 9 January 2012, the investigator informed counsel that the investigation had been resumed. The author was questioned again and she reiterated her claims. On 1 February 2012, the investigator advised that the investigation had again been suspended, on the same grounds as on 2 December 2011. The full text of the suspension decision was never provided, either to the author or to counsel.

2.8 The author claims that she has exhausted all available domestic remedies. She claims that she cannot reasonably be expected to complain against the investigator's decisions to suspend the investigation, as she was not provided with those decisions. Counsel's request to be provided with those decisions was denied, and the denial is not subject to judicial review under Belarusian law. Therefore, the author argues that there are no other domestic remedies available to her.

2.9 The author requests that the State party should provide her with appropriate remedies, which may include but should not be limited to: monetary compensation for the medical expenses incurred; non-pecuniary damages; an effective investigation into the ill-treatment, leading to fair prosecution and due punishment of those responsible; and an official apology.

The complaint

3.1 The author claims that the ill-treatment she suffered at the hands of the police during the night of 19 to 20 December 2010 amounts to a violation of her rights under article 7 of the Covenant. As a result of the ill-treatment, her leg was broken and she had to undergo

surgery and remain in the hospital for a week, with a subsequent prolonged period of rehabilitation. There was no justification for the police to use violence, as she was part of a peaceful group. The author also claims that she was not immediately provided with medical assistance, and notes that, according to the Committee's jurisprudence, the prohibition contained in article 7 of the Covenant relates to acts causing physical pain and/or mental suffering to the victim.[1] She further claims that she was not only physically assaulted but was also affected mentally, since the authorities wanted her to feel helpless and to victimize her. Moreover, she claims that her age and her gender should be also taken into account when assessing the gravity of the ill-treatment.

3.2 The author notes that, pursuant to the Committee's case law, complaints of ill-treatment must be investigated promptly and impartially by competent authorities.[2] She claims that the investigation carried out in her case did not comply with the requirements of article 7 of the Covenant, as the Prosecutor's Office initially forwarded her complaint to the police, that is, to the same agency to which the alleged perpetrator belonged, and because no action was taken until May 2011 — six months after the events. In the circumstances, the investigation at its crucial initial stage lost its required independence and was not conducted expeditiously. Once reopened, the investigation failed to identify those responsible for the author's ill-treatment. The investigator failed to question eyewitnesses and to organize an identity parade.

State party's submission

4. In a note verbale dated 5 January 2013, the State party requested the author to submit the Russian translation of her initial communication, which had been submitted in English. The State party submitted that by considering communications in languages other than Russian or Belarusian, it may not be in a position to ensure the adequacy of the translation, and to verify allegations stated therein, and may therefore be disadvantaged in terms of contributing to the objective consideration of communications. The State party stands ready to consider the admissibility of the communication as soon as the Russian or Belarusian translation thereof becomes available.

Author's submission

5. On 11 January 2013, the author provided the Russian translation of her initial communication. She observes that the State party should organize its authorities in order to deal with communications lodged with the Committee in its official and working languages.

State party's observations on admissibility

6.1 In a note verbale dated 17 December 2014, the State party submitted its observations on admissibility only. Since the communication and its Russian translation were submitted by counsel, the State party considers that Maya Abromchik is not the author of the communication and therefore the communication was registered in violation of the Optional Protocol. The State party adds that the investigation into the infliction of bodily injury on the author was not terminated but rather suspended due to the impossibility of identifying those responsible. The author can appeal against the decision to suspend the investigation, before a prosecutor. The State party concludes that the Committee should not consider the communication on the merits, as it was submitted in violation of articles 1, 2 and 5 of the Optional Protocol. The State party indicates that, in the circumstances, it has discontinued the proceedings relating to the present case.

6.2 In a note verbale dated 26 March 2015, the State party reiterated its previous observations.

[1] See the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 5.

[2] See *Zyuskin v. Russian Federation* (CCPR/C/102/D/1605/2007), para. 11.5.

Author's comments on the State party's observations on admissibility

7.1 On 30 January 2015, the author referred to the Committee's jurisprudence that it is up to the Committee to determine whether a communication should be registered.[3] The author is represented before the Committee by counsel practising in the Russian Federation, based on the power of attorney, in line with the Committee's rules of procedure. A complaint to the Prosecutor's Office is not an effective remedy, as it does not provide for a truly adversarial and independent review akin to judicial review. Therefore, it should not be a requirement that such a remedy be exhausted. As regards a judicial remedy, such a remedy in the author's case is not available under domestic law.

7.2 On 2 May 2015, the author submitted that the State party's observations of 26 March 2015 were identical to its observations of 17 December 2014. Therefore, the author refers to her comments of 30 January 2015. The author considers that by providing identical unsubstantiated observations, the State party has abused its right under article 4 (2) of the Optional Protocol.

Issues and proceedings before the Committee

Lack of cooperation by the State party

8.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it was registered in violation of the Optional Protocol, in particular because the communication was not submitted by the author herself but by counsel and because domestic remedies had not been exhausted. The Committee also notes the State party's statement that it has discontinued its proceedings in relation to the present communication before the Committee.

8.2 The Committee recalls its practice, as reflected in rule 96 (b) of its rules of procedure, that individuals may be represented by a person of their choice, provided that the representative is duly authorized. A communication submitted on behalf of an alleged victim may also be accepted when it appears that the individual in question is unable to submit the communication personally. Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination thereof, to forward its Views to the State party concerned and to the individual (see art. 5 (1) and (4)).[4] It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of a communication, and in the expression of its Views.[5] It is for the Committee to determine whether a communication should be registered. The Committee observes that, by refusing the right of an individual to be represented and by failing to accept the competence of the Committee to determine whether a communication should be registered, the State party has violated its obligations under article 1 of the Optional Protocol.[6]

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

9.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 With regard to the requirement set out in article 5 (2) (b) of the Optional Protocol, the Committee notes that the State party challenged the admissibility of the communication on the ground of non-exhaustion of domestic remedies, as the author had not appealed,

[3] See *Stambrovsky v. Belarus* (CCPR/C/112/D/1987/2010), para. 5.2.

[4] See, mutatis mutandis, *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para 5.2.

[5] See, inter alia, *Padilla and Sunga v. Philippines* (CCPR/C/70/D/869/1999), para. 5.1; and *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010), para. 5.2.

[6] See, for example, *M.J. v. Belarus* (CCPR/C/121/D/2471/2014), para. 8.4.

before a prosecutor, against the decisions to suspend the investigation. The Committee notes that the State party has not indicated to which prosecutor's office the author should have lodged such an appeal. It also notes the author's unrefuted submission that the denial of her counsel's request for a copy of that decision prevented her from submitting an appeal. It further notes her argument that an appeal to a hierarchically superior prosecutor does not provide for a truly fair, adversarial and independent review and therefore does not constitute an effective remedy. The author has also stressed that domestic law does not provide for judicial review of the investigator's decision to suspend the investigation. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office does not constitute an effective domestic remedy which must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[7] It also notes that the State party has not provided any information on available judicial remedies which would have been or remained at the author's disposal.[8] In the circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

9.4 The Committee notes the author's claims under article 7 of the Covenant that the ill-treatment that she suffered at the hands of the police amounts to torture and that no effective investigation was conducted by the domestic authorities in that connection. The Committee considers that this part of the communication also raises issues under article 2 (3) of the Covenant.

9.5 The Committee considers that the author has sufficiently substantiated her claims under article 7, read alone and in conjunction with article 2 (3), of the Covenant, for the purposes of admissibility, and proceeds with its consideration of the merits.

Consideration of the merits

10.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

10.2 The Committee notes the author's claims under article 7 of the Covenant that on 19 December 2010, after she had observed a peaceful assembly in the centre of Minsk, she was beaten by a police officer, resulting in a compound leg fracture, seven days' hospitalization and prolonged partial incapacity.[9] The author also submitted that timely medical assistance had not been provided to her. The Committee notes that the author has submitted a detailed account of the ill-treatment to which she was subjected, supporting medical evidence, and accounts of eyewitnesses. The Committee notes that the author's allegations remained unrefuted by the State party. In the absence of any information from the State party, the Committee considers that the facts as presented amount to a violation of the author's rights under article 7 of the Covenant.

10.3 The Committee also notes the author's claim that the investigation into her ill-treatment was ineffective, due to its lack of promptness and of impartiality. In particular, criminal proceedings were only opened on 18 April 2011, that is, four months after she reported the incident to the prosecutor's office, but were suspended on 2 December 2011 and 1 February 2012, due to the failure of the authorities to identify the perpetrator.

10.4 In this connection, the Committee notes the author's argument that the investigation did not truly seek to identify the perpetrator, and that her requests that the investigators question eyewitnesses and set up an identity parade were denied, even though she had stated that she would be able to identify the officer responsible. The Committee also notes the author's claim that the investigation lacked impartiality, as it was initially entrusted to the Minsk City police, with which the perpetrator was affiliated. The Committee observes that these allegations have not been refuted by the State party. The Committee recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate the complaint promptly and impartially.[10] In the present case, more than seven

[7] See, for example, *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.3.

[8] See, for example, *Yklymova v. Turkmenistan* (CCPR/C/96/D/1460/2006), para. 6.2.

[9] See para. 2.2 above.

[10] See the Committee's general comment No. 20, para. 14.

years after the fact, the perpetrators remain to be identified and prosecuted. In the absence of any information from the State party, specifically in relation to any effective investigation undertaken to address expeditiously, independently and adequately the allegations advanced by the author,[11] due weight must be given to the author's allegations. In these circumstances, the Committee considers that the facts as submitted reveal that the State party has failed in its duty to adequately investigate the allegations put forward by the author. Accordingly, the Committee concludes that this part of the communication reveals a violation of the author's rights under article 7, read in conjunction with article 2 (3), of the Covenant.[12]

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by Belarus of article 7, read alone and in conjunction with article 2 (3), of the Covenant. The Committee reiterates its conclusion that the State party has also violated its obligations under article 1 of the Optional Protocol.

12. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation, inter alia: (a) to conduct a full and effective investigation into the author's allegations of ill-treatment, to prosecute the perpetrators and to punish them with appropriate sanctions; (b) to provide adequate compensation and appropriate measures of satisfaction, including reimbursement of any legal costs and medical expenses, as well as for non-pecuniary losses, incurred by the author; and (c) to issue a formal apology to the author. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, and in the light of its obligations under the Optional Protocol, to cooperate in good faith with the Committee.[13]

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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[11] See, for example, *Allaberdiev v. Uzbekistan* (CCPR/C/119/D/2555/2015), para. 8.3.

[12] See, for example, *Amirov v. Russian Federation* (CCPR/C/95/D/1447/2006), para. 11.6.

[13] See, for example, *Selyun v. Belarus* (CCPR/C/115/D/2289/2013), para. 9.